Supreme Court, U.S.
FILED

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No. 10-780

In The
Supreme Court of the United States

Ping Yip

Petitioner

v.

Audrey L. Storch, and
Hugs to Go LLC, and JAAM LLC

Respondents

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Federal Circuit**

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner
Ping Yip (Winnie)
58 West Saddle River Road
Saddle River NJ 07458
Phone: (201) 316-6270
Fax: (201) 995-0839
E-mail: Yip510@aol.com

QUESTIONS PRESENTED FOR REVUE

(1) Defendant Audrey L. Storch has been deceiving the United States Copyright office by fraudulently registering the same books as Wai Yip copyright No. TXu 1-123-585 and Txu 1059-189. Neither the District Court of New Jersey Judge Katharine S. Hayden nor the Federal Circuit will permit Plaintiff to sue her.

(2) The Federal Circuit affirmed Judge Katharine S. Hayden's decision without adequate reason. From the start of the case, Audrey L. Storch has never been allowed to be sued. Thus, it is an unjust excuse to use the ruling that "one person cannot be sued in the same case many times" to deny case number 2:08-cv-4746.

(3) In this case the District Court judge disobey the Constitution, Bill of Rights, and the Patent and Copyright Laws. This case was unjustly denied all the necessary court procedures as well as a trial.

Our laws are meant to be equal for all citizens, so it would be wrong if Audrey L. Storch is allowed to forgo the same copyright and patent laws that apply to the rest of society. She ordered and reproduced copyrighted books and duplicated the copyright, claiming ownership of the books. Following this logic, everyone should be able to buy a book and take ownership simply by registering it with a new copyright.

(4) In the case Wai Yip v. JAAM'LLC, the District Court Judge Katharine S. Hayden's opinion was that Audrey L. Storch is not JAAM'LLC. Ms. Storch and JAAM'LLC are two different parties, so even if Ms. Storch personally violated the Patent and Copyright, her name cannot be added to Wai Yip v. JAAM'LLC. In separate case no. 2:8-cv-4767, Ping Yip v. Audrey L. Storch, District Court Judge Katharine S. Hayden still will not allow Ms. Yip to sue Ms. Storch. Considering both cases, there is no reason as to why Audrey L. Storch cannot be sued at all.

The Federal Circuit's opinion is that Ms. Yip and Wai Yip Int'l Corp is the same party, and since Wai Yip cannot sue Audrey L. Storch, Ms. Yip also cannot sue her. Again, there was no reason supplied for this restriction on suing Audrey L. Storch. Somehow it was overlooked that Ms. Yip and Wai Yip Int'l Corp are not the same party. Ms. Yip is an individual citizen whereas Wai Yip International Corporation is a wholly separate entity with shareholders.

(5) Audrey L. Storch has been exploiting the kindness of people by promising them to donate all of the sales earned from "Huggee Miss You," a JAAM'LLC product. JAAM'LLC only claims to donate all sales to Breast Cancer Research, when in reality, it could be donating little to nothing. With a proper inspection, it can be exposed that Ms. Storch has only used "donation" as a ploy to swindle money from unsuspecting buyers.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2
SUMMARY OF FACTS AND CASE 4
POINTS OF LAW AND FACT OVERLOOKED OR MISAPPREHENDED BY THE FEDERAL CIRCUIT 8
ARGUMENTS 12

I. The Opinion is obviously erroneous; fact finding is contrary to rule 52

A. The Federal Circuit disregards the fact that Audrey L. Storch took Plaintiff's books and fraudulently registered them as her own at the

B. Ms. Yip did not sue Audrey L. Storch in the same claim a number of times.

II. The Federal Circuit Court and NJ District Court Judge disobey Federal Rules 38, 39, and 40.

A. The Panel is wrong to compel plaintiff to follow District Court Judge Katharine S. Hayden's unreasonable order not allowing her to sue Audrey L. Storch, and JAAM.

B. According to Federal Rules of Evidence Rule 609 (b) Ms. Yip has the right to submit evidence and clearly describe it in her amendment.

REASONS FOR GRANTING THE PETITION 15
CONCLUSION 15
INDEX TO APPENDICES 16

TABLE OF AUTHORITIES

CASES

Mobroc Body Co. et al. v. Herzog et al 13F. 2d 705; 1926 U.S.App (926)..... 12
Ployd M. Minks v. Polaris Industries 546 F. 3d 1364; 2008..... 12
Yash Raj Flins (USA), INC v. Daljit CV F 09-0233 AWI GSA..... 12
Wedgetail, Ltd. and Bobby D. King v. Huddleston Deluxe, Inc 576 F. 3d 1302; 2009 U.S. App..... 14
Golden Blount, Inc v. Robert H. Peterson Co 438 F. 3d 1354; 2006 U.S. App..... 14
Robert Gentile v. Sun Products, Inc. 2009-1529 2010 U.S. App..... 14
Applied Medical Resources Corporation v. United States Surgical Corporation 435 F. 3d 1356; 2006 U.S. App... 14

STATUTES AND RULES

The Constitution of the United States Bill of Rights.... 4
Title 42 U.S. Code § 1983..... 8
Fed. R 52..... 8,10,12
17 §506 (a) (1) (c),(2)(b)(c)(c)..... 9,12
Fed. R 8(a)(2)..... 10
Federal Circuit Rule 3(c)(4)..... 10
Federal Circuit Rule 16(b)..... 10,14
Fed. R. 38, 39, 40..... 10,13
Circular 9, Work- Made-For Hire under the 1976 Copyright Act..... 12
Fed. R. 17(b)..... 13
17 USC §1203(b)(c)..... 13
17 USC §1204(a)..... 13
Fed. R 26..... 13
Fed. R 61..... 9,13
§511(a)(b)..... 14
Federal Rules of Evidence Rule 609 (b)..... 14

OPINIONS BELOW

For cases from the District Court of New Jersey:

The opinion of the Case Number 2:06-cv-05032-KSH-PS appears at Appendix G to the petition and is published on the Internet and reported at LEXIS 89209(D.N.J; Dec. 11, 2006)

The orders of the Case Number 2:08-cv-04746-KSH-PS appear at Appendix K,L,N, it is unpublished.

For cases from The Federal Circuit Court:

The Judgment of the Case Number 2010-1112, May 28, 2010 appears at Appendix P, it is reported at LEXIS 10932 (fed. Cir; May 28, 2010)

The Judgment of the Case Number 2010-1112, AUG 25, 2010 appears at Appendix P, it is unpublished.

JURISDICTION

For case from The Federal Circuit Court:

The date on which the Federal Circuit Court decided my case: A timely petition for rehearing was denied by Federal Circuit Court of Appeals on AUG 25, 2010, and a copy of the order denying rehearing appears at Appendix P.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States Bill of Rights: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law. It is no reason Ms. Ping Yip cannot have a trial base on the Constitution and statutory.

The Constitution of the United States Article 1-Section 8, Power of Congress: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive right to their respective Writings and Discoveries." Ms. Ping Yip's Patent and Copyright shall same as others protect by the Constitution.

Circular 9, Work-Made-For Hire under the 1976 Copyright Act [If a work is a work made for hire, the employer or other person for whom the work was prepared is the author and should be named as the author in Space 2 of the application for copyright registration. The box marked "work-made-for hire" should be checked "Yes"] Audrey L. Storch is not a "work-made-for hire" author.

17 §506 (a) "Criminal Infringement- (1) In general-Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed-(A) for purposes of commercial advantage or private financial gain"

17 USC §1203(b)(6)"may, as part of a final jugment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2)."

17 USC §1203(c)(2) "The court shall awared to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered."

17 §511(a) "Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal Court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 122, for importing copies of phone records in violation of section 602, or for any other violation under this title." Audrey L. Storch shall not be immune for her willful infringement, and fraudulently registering these copyrighted books.

SUMMARY OF FACTS AND CASE

Judge Katharine S. Hayden from the District Court of New Jersey has ignored the truth. Judge Katharine S. Hayden violated the Copyright and Patent laws to protect Defendant Audrey L. Storch. Because of her actions, Plaintiff Ping Yip has been denied a fair trial and all the necessary court procedures have been taken away from this case. The Federal Circuit affirmed Judge Katharine S. Hayden's decision without any assessment of the truth. It is disobey of [the Constitution of the United States Bill of Rights].

Wai Yip International Corp is a foreign corporation and has many shareholders in another country. Ms. Yip is one of the shareholders and administers this corporation. JAAM'LLC is a family company. The owners of this LLC are Audrey L. Storch and her husband Michael Storch. In 2001, Defendant Audrey L. Storch's company, JAAM'LLC, ordered books from Wai Yip Int'l Corp. Ms. Ping Yip had patented these books (Patent No. 6,641,170) and Wai Yip Int'l Corp owned the copyright (Copyright No. TXu 1-123-585 and Txu 1059-189). Ms. Storch fraudulently registered these books as her own at a Copyright Office. She then used JAAM'LLC to make these books and sold approximately a million dollars' worth of them. In addition, Ms. Storch told numerous toy businesses and their clients that said books were her invention and her designs. Consequently, this causeddifficulties in getting marketing companies to promote Wai Yip Int'l Corp's products. Due to complications involving dual copyrights for the same books, Wai Yip Int'l Corp has since fallen into serious financial crisis, and its associated shareholders have equally suffered. Lastly, JAAM'LLC still owes Wai Yip Int'l Corp merchandise money approximating four thousand dollars.

In 2004, Wai Yip Int'l Corp filed a complaint through a collections attorney at Passaic Superior Court to collect the money JAAM'LLC owes. JAAM'LLC answered with a third party counterclaim demanding that Wai Yip Int'l Corp pay JAAM'LLC about three hundred thousand dollars upon the reasoning that JAAM'LLC lost sales when Wai Yip Int'l Corp refused to give it an exclusive right to sell. Since this case involves Patent and Copyright laws, the Superior Court ordered Wai Yip Int'l Corp to file a complaint in the New Jersey District Court.

In 2006, Feng Li, Esq., representing Wai Yip Int'l Corp, filed a Copyright Patent infringement Complaint at the District Court of New Jersey accusing JAAM'LLC and Audrey L. Storch of willful infringement. District Court Judge Hayden did not allow the lawsuit to include Audrey L. Storch for fraudulently registering these copyrighted books without providing any reason and proper law. Wai Yip Int'l Corp's attorney, Feng Li, abandoned this case without notifying the District Court or Wai Yip Int'l Corp. Throughout the case, the District Court did not send any notices to Wai Yip Int'l Corp. Unlike the Federal Court, the District Court properly viewed Ms. Yip and Wai Yip Int'l Corp as separate parties. In Case No. 06-5032, Ms. Ping Yip was only a witness. She was not informed by the Court about its request or decision. Ms. Ping Yip only found information about this case from the Internet.

Wai Yip Int'l Corp wanted to add Defendant Audrey L. Storch to the Case No. 06-5032, because it found out that Ms. Storch was deceiving the United States Copyright Office by fraudulently registering books belonging to Wai Yip Int'l Corp (copyright No. TXu 1-123-585 and Txu 1059-189).

On August 13, 2007, Audrey L. Storch made a fake Copyright Assignment Agreement, paying one dollar and transferring the Old MacDonald and ABC books copyrights to her company, JAAM'LLC. Audrey L. Storch signed the name for both Assignor and Assignee. (See the Assignment Agreement).

Afterwards, in December 2007, Ms. Storch started a new company called Hugs to Go, LLC. to conduct the same business as JAAM'LLC. On February 29, 2008, Ms. Storch filed Chapter 7 Bankruptcy for JAAM'LLC to evade the penalties of Copyright and Patent infringement.

On April 23, 2008, Ms. Ping Yip, Mr. Cheung Fung Tsang (the voice in the ABC book), and Mr. JianHua Fei (the illustrator for these books) filed a joint-complaint against Audrey L. Storch for plagiarizing their work, deceiving the United States Copyright Office, and for Bankruptcy fraud [Case No. 08-2370(SDW)]. The District Court Judge Susan D. Wigenton dismissed the case without prejudice based on Defendant's pending bankruptcy filing, and "advised that any further filing related to Defendant's bankruptcy should be filed in the U.S. Bankruptcy Court." As "Automatic Stay" within the Bankruptcy Court is very powerful, Ms. Ping Yip must vacate the stay first. Ms. Ping Yip followed the Court order to file a complaint against JAAM'LLC's Bankruptcy Fraud in Bankruptcy Court Case No. 08-13514. (See Judge Susan D. Wigenton's order; it is not as Judge Hayden and panel described "dismiss with prejudice").

After the Bankruptcy Court vacated the stay on September 23, 2008, Ms. Ping Yip filed a Patent and Copyright infringement Complaint against Audrey L. Storch and her two Companies JAAM' LLC and Hugs to Go' LLC. Case No. 08-4746(KSH).

Ms. Ping Yip complied with the law and Judge Susan D. Wigenton's order to vacate the stay and followed the Patent and Copyright Law to file a complaint at the District Court. The District Court Judge should enforce the law to protect the rightful Patent owner. In both of Judge Katharine S. Hayden's orders involving Case No. 06-5032 Wai Yip v. JAAM and Case No. 08-4746 Ping Yip v. Hugs to Go' LLC, she never indicated why Wai Yip Int'l Corp and Ms. Yip cannot complain against Audrey L. Storch. (See Judge Hayden's "Opinion" on Case No. 06-5032, and "Order" on Case No. 08-4746). Judge Hayden disregarded the facts that Audrey L. Storch personally plagiarized Ms. Ping Yip's work and deceived the United States Copyright Office. Judge Hayden improperly argued there was no evidence to prove Audrey L. Storch's infringement and her order stated that Ms. Ping Yip can only file complaint against Hugs to Go' LLC. Judge Hayden gave Ms. Ping Yip the chance to amend the complaint to be solely against Hugs to Go' LLC. Ms. Ping Yip did not take this "chance" and requested that Judge Hayden give proper explanation as to why Ms. Ping Yip cannot also sue Audrey L. Storch (against whom Ms. Ping Yip had strong evidence). Consequently, Judge Hayden became irate and dismissed Case No. 08-4746. (See Judge Hayden's November 9, 2009 order).

When Ms. Yip appealed to the Federal Circuit Court, the panel misapprehended Wai Yip Int'l Corp as having sole propriety, confusing the person Ms. Ping Yip and the company Wai Yip International Corp. The Federal Circuit affirmed Judge Katharine S. Hayden's decision without any assessment of the truth and denied Ms. Ping Yip's petition for rehearing without explanation.

Based on Title 42 U.S. Code § 1983 "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..." Ping Yip has the right to continue all the necessary court procedures and have a trial.

POINTS OF LAW AND FACTS OVERLOOKED OR MISAPPREHENDED BY THE FEDERAL CIRCUIT COURT

This is a nonprecedential Patent and Copyright infringement case. Plaintiff does not have a Trial and Hearing. The Federal Circuit Court found contrary to the law of [Fed. R. 52] Findings and Conclusions by the Court; Judgment on Partial Findings. This Case 08-4746 (ksh) was not allowed a trial, hearing, nor discoveries in the District Court. The Federal Circuit Court still denied Ms. Yip's request for an oral argument. The Federal Circuit Court only repeated District Court Judge Katharine S. Hayden's words, and the reasons Federal Circuit Court affirmed the District Court's dismissal are Factually and Legally Erroneous.

1. The Federal Circuit Court, contrary to the law, found prima facie and ignored the major fact that Audrey L. Storch ordered the patented and copyrighted books "Old MacDonald's Farm" and "ABC" from Wai Yip International Corp. She took these books and fraudulently registered them as her own at the Copyright Office. This is criminal infringement. [17 §506a (1)(c), (2)(b)(c)(e)]. **In this case the District Court Judge did not explain why Ms. Yip could not sue Audrey L. Storch and JAAM'LLC.** Without further investigation, the Federal Circuit Court barred Ms. Yip from the present action based on res judicata and issue preclusion.[1]

2. Ms. Yip is the owner of U.S. Patent No 6,641,170 and the "work for hire" author on U.S. Copyright No. TXu 1-123-585 and TXu 1059-189. Wai Yip International Corp is a Foreign Corporation and has many shareholders in another country. Ms. Yip is one of the shareholders and administers this Corporation[2] in the USA. It is not as the Federal Circuit Court stated "where the nonparty has succeeded to, or shares a concurrent right to the party's interest in property...." This is anobvious error. [Fed. R 61 Harmless Error]. Any error by the court or a party is ground for granting a new trial.

3. An excuse the Federal Circuit Court made for dismissing this case is "Yip's complaint still did not meet the pleading requirements of Rule 8(a)(2)." This is unreasonable, and a perjury. Ms. Yip followed Rule 8(a)(2); A short and plain statement of the claim showing that the pleader is entitled to relief was submitted to the court with the first complaint. According to District Court Procedural Guide for Pro Se Litigants, Pro Se does not have to sign a Certificate of Interest. Ms. Yip obeyed the instruction and filled out all the forms the District Court required.

The Federal Circuit Court violated [Federal Circuit Rule 3(c)(4)] and (or) Rule 16(b)], "An appeal must not be dismissed for informality of form...", "The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement..."

4. Ms. Yip is one of the shareholders in Wai Yip International Corp. Ms. Yip was a witness in Case No. 06-5032 (ksh). The District Court did not send any documents or notices to her, so she could not even learn when this case closed. Ms. Yip found the information about this case on "LexisNexis" and other Internet sources. (See 11/26/2007 Judge Katharine S. Hayden's opinion that was published on the Internet).

5. The Federal Circuit Court and NJ District Court Judge disobeyed the [Federal Rule 38, 39, 40, 52]. Plaintiff did not have a trial by Jury or by Court, or any other court procedures. This is a clear error made by the Federal Circuit Court and NJ District Court. If there is no trial, the Court should follow the [Rule 52(a)(c)] "In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately."

6. The NJ District Court Judge Katharine S. Hayden's opinion is that JAAM'LLC and Audrey L Storch are two different parties, and Audrey L. Storch does not have to take responsibility for her company JAAM'LLC. In contrast, the Federal Circuit Court views Ms. Ping Yip and Wai Yip Int'l Corp as the same party and wrongly denied the Federal Circuit case number 2010-1112.

7. It appears Audrey L. Storch is never allowed to be sued in any case. There needs to be an explanation as to why Audrey L. Storch can be above the law without penalty.

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[1] The District Court Judge did not explain why Wai Yip Int'l Corp cannot sue Ms. Storch in Wai Yip v. JAAM case, (see LEXIS 86502) Fed. R. Civ. P. 15(a) The rule "permits a party to amend a pleading once as a matter of course before a responsive pleading is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; leave shall be freely given when justice so requires. The United States Supreme Court has carved out the discretionary boundaries for granting leave to amend a pleading by setting forth several factors that should shape the judge's decision, including: undue delay; bad faith or dilatory motive on the part of the movant; repeated failure to cure deficiencies by amendments previously allowed; undue prejudice to the opposing party by virtue of allowance of the amendment; and futility of the amendment. Because R. 15(a) mandates that leave be "freely given," the grant or denial of an opportunity to amend is within the discretion of a district court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion, it is merely abuse of that discretion and inconsistent with the spirit of the federal rules. Both that the grant or denial of a motion to amend is discretionary, and a court must provide reasons for denying a motion to amend in line with the relevant factors."

[2] LLC stands for Limited Liability Company, because it is not a partnership or a corporation. The owners of an LLC are not partners or shareholders; they are members. In corporations, shareholders may transfer stock or their interest in ownership, while members of an LLC cannot. Wai Yip International Corp is an FR Corp. and has many shareholders. JAAM'LLC is a family company. The owners of this LLC are Ms. Storch 51 shares, and her husband Michael Storch 49 shares.

ARGUMENTS

I. The Federal Circuit 's decision is obviously erroneous. Fact finding is contrary to [Rule 52].

A. The Federal Circuit disregarded the fact that Audrey L. Storch took Plaintiff's books and fraudulently registered them as her own at the Copyright Office. [Circular 9, Work-Made-For Hire under the 1976 Copyright Act] and [17 §506 (a) (1) (C), (2)(B)(c)] Audrey L. Storch willfully infringing Copyright law is this case's main point. In similar infringement cases, Mobroe Body Co. et al. v. Herzog et al 13F. 2d 705; 1926 U.S.App (1926) and Ployd M. Minks v. Polaris Industries 546 F. 3d 1364; 2008, Under 35 U.S.C.S. § 284, the Court awarded the damages. In Yash Raj Flins (USA), INC v. Daljit CV F 09-0233 AWI GSA, the Court found Defendant's infringement of plaintiff's works was admittedly willful. In this case, the court concluded that Plaintiff is entitled to attorneys fees.

B. The Federal Circuit Court copied the District Court's incorrect decision alleging that Plaintiff Ms. Yip sued Audrey L. Storch a number of times in the same claim. In reality, Ms. Yip and the other two Plaintiffs first filed a complaint against Ms. Storch in May 2008. The District Court Judge Susan D. Wigenton dismissed the case without prejudice, and advised that further filing related to Defendant's bankruptcy should be filed in the U.S. Bankruptcy Court. Ms. Yip obeyed the District Court order, filed the Motion for JAAM Bankruptcy Fraud at the Bankruptcy Court to "Relief from Automatic Stay". The District Court does not hear Bankruptcy Cases as only Bankruptcy Court deals with them.

JAAM'LLC committed Bankruptcy Fraud and Ms. Ping Yip has the right to file a complaint at Bankruptcy Court. This is a completely different claim and cannot be mixed up with Case No. 08-cv-4746. In Wai Yip Int'l Corp v. JAAM'LLC, Ms. Yip was only a witness. In this case, Wai Yip Int'l Corp's claim for the Corporation's damages was within its rights. [Fed. R. 17(b)] (Wai Yip Int'l Corp is the owner of these two Copyrights and has an agreement to use Ms. Yip's Patent as well as her "work for hire" author of these two Copyrights. This is clearly shown on the Patent and Copyright documents).

Ms. Yip is the owner of U.S. Patent No 6,641,170. She has the right to claim damages. Wai Yip Int'l Corp and Ms. Yip are two different parties, and each party claims their own damages. Ms. Yip has the right to request an adjudication so it can be decided who is the real author. [17 USC §1203 (b)"....may, as part of a final jugment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in (c) 17 USC §1204(a)]

II. The Federal Circuit Court and NJ District Court Judge disobeyed the [Federal Rule 26, "Disclosures and Discovery"] [Rule 38, "Right to a Jury Trial"] [Rule 39, Trial by Jury or by the Court], [Rule 40, "Scheduling Case for Trial"] [Rule 61"Harmless Error"].

A. The Federal Circuit Court is wrong to compel Plaintiff to follow the District Court Judge Katharine S. Hayden's order barring the Plaintiff from suing Audrey L. Storch and JAAM'LLC. (In this case, Ms.Yip never had any hearing or oral argument, and all of the Court procedures have been taken away from her.

The District Court Judge Katharine S. Hayden rejected Ms. Yip's request for discovery without explanation, which is unfair to the Plaintiff. In this nonprecedential case without all necessary Court Procedures, how can this Court have a fair judgment based on facts and accurate law? The District Court's orders were made without providing adequate reasons and proper laws in the case of Wai Yip v. JAAM and also made an improper adjudication in the other Case No. 08-cv-4746 Ping Yip v. Audrey L. Storch

All infringement cases should have a trial. See Wedgetail, Ltd. and Bobby D. King v. Huddleston Deluxe, Inc 576 F. 3d 1302; 2009 U.S. App, Golden Blount, Inc v. Robert H. Peterson Co 438 F. 3d 1354; 2006 U.S. App, Robert Gentile v. Sun Products, Inc. 2009-1529 2010 U.S. App, Applied Medical Resources Corporation v. United States Surgical Corporation 435 F. 3d 1356; 2006 U.S. App. It is not right for Audrey L. Storch to be immune from penalties related to her willful infringement [17 §511(a) (b)].

B. The Federal Circuit Court concluded that Ms. Yip did not clearly describe the reason why she complained against Hugs to Go' LLC at the very beginning. According to "Federal Rules of Evidence" [Rule 609 (b)] Ms. Yip has the right to submit evidence and clearly describe it in her later amendment. Based on this Court [Rule 16(b)], Ms. Yip may at any time, by stipulation, supply any omission from the record or correct a misstatement.

REASONS FOR GRANTING THE PETITION

Audrey L. Storch has persistently lied and deceived the United States Copyright Office. In addition, orders of dismissal from the aforementioned Courts have been improperly based.

CONCLUSION

For the foregoing reasons, the Petition for writ of certiorari should be granted.

Respectfully submitted

Winnie Yip

Pro se Ping Yip Winnie
September 30, 2010

INDEX TO APPENDICES

A Ping Yip Winnie's Patent No. 6,641,170 of November 4, 2003

B Wai Yip Int'l Corp's Copyright No. Txu 1059-189 of August 24, 2001

C Wai Yip Int'l Corp's Copyright No. TXu 1-123-585 of May 17, 2002

D Audrey L. Storch.s Copyright No. VAu 557-895 of June 24, 2002

E Audrey L. Storch's Copyright No. VAu 701-286 of May 30, 2006

F Audrey L. Storch's Assignment Agreement of August 13, 2007

G Judge Katharine S. Hayden's Opinion of November 26, 2007

H Judge Susan D. Wigenton's order of June 2, 2008

I Judge Steckroth vacating stay onf July 29, 2008

J A short and clear paper explaining why Ms. Ping Yip filed a complaint against Audrey L. Storch on October 9, 2008

K Judge Katharine S. Hayden's order of September 28, 2009

L Judge Katharine S. Hayden's order of October 15, 2009

M Judge Katharine S. Hayden's order of October 29, 2009

N A letter Ping Yip sent to Judge Hayden of November 3, 2009

O Judge Katharine S. Hayden's order of November 9, 2009

P The Federal Circuit Court Judgment of May 28, 2010

Q The Federal Circuit Court Judgment of August 28, 2010

R JAAM'LLC advertising paper

APPENDICES

US006641170B2

(12) **United States Patent**
Yip

(10) **Patent No.: US 6,641,170 B2**
(45) **Date of Patent: Nov. 4, 2003**

(54) **CHILDREN'S SOUND BOOK**

(76) Inventor: **Winnie Yip**, 58 W Saddle River Rd., Saddle River, NJ (US) 07458

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U S C. 154(b) by 0 days

(21) Appl No : **09/965,091**

(22) Filed: **Sep. 27, 2001**

(65) **Prior Publication Data**

US 2003/0057696 A1 Mar 27, 2003

(51) **Int. Cl.**[7] **B42D 3/00**

(52) **U.S. Cl.** **281/29**; 281/36; 281/37; 281/38; 281/51; 434/317

(58) **Field of Search** .... 2[illegible]29, 36, 37, 281/51; 402/70, 73; 434/317, 327, 339, 169

(56) **References Cited**

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5,356,296 A * 10/1994 Pierce et al. 434/317
5,997,304 A * 12/1999 Wood 434/169

* cited by examiner

Primary Examiner—Willmon Fridie, Jr.
(74) *Attorney, Agent, or Firm*—Richard A Joel, Esq

(57) **ABSTRACT**

This invention relates to children's sound books and in particular to books having a fabric covering with sound chips positioned therein and an overlapping cover which closes and locks due to hook and loop fasteners This invention involves a folding cloth covered book that is appealing to children, pleasant to touch and stretches out into an elongated representation of the book subject matter. Sound chips and a controller are mounted between cloth layers and are coupled to a controller similarly mounted to emit sounds when a particular representation is contacted. The books are intended for children 6 months old and above.

2 Claims, 5 Drawing Sheets

BEST AVAILABLE COPY

CERTIFICATE OF REGISTRATION

FORM TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS

TXu 1-059-189

EFFECTIVE DATE OF REGISTRATION
Month 8 Day 24 Year 2001

OFFICIAL SEAL

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼
OLD McDONALD'S FARM

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼
WAI YIP INT'L CORP

DATES OF BIRTH AND DEATH
Year Born ▼ 1955 Year Died ▼

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼
ENTIRE CONTENTS OF ~~TEXT~~ ILLUSTRATIONS AND COMPILATION

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
2001 ◀ Year

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ Day ▶ Year ▶ ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
WAI YIP INT'L CORP
58 WEST SADDLE RIVER ROAD
SADDLE RIVER, NJ 07458

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED
[illegible]

ONE DEPOSIT RECEIVED
[illegible]

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 1-9) on the reverse side of this page. • See detailed instructions. Sign the form at line 8.

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

* Amended by CO per authority of phone call with Nancy Rispoli of Joel & Joel LLP on October 30, 2002.

EXAMINED BY

CHECKED BY

☒ CORRESPONDENCE Yes

FORM TX

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☑ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a ☐ This is the first published edition of a work previously registered in unpublished form.

b ☐ This is the first application submitted by this author as copyright claimant.

c ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▶ Year of Registration ▶

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼ Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

JOEL & JOEL, LLP
RICHARD A JOEL, ESQ
496 KINDERKAMACK ROAD
ORADELL, NJ 07649

b

Area code and daytime telephone number ▶ 201-599-0588

Fax number ▶ 201-599-0179

Email ▶ RJOELSR@ATT.NET

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▶

☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☑ authorized agent of WAI YIP INT'L CORP.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

WINNIE YIP Date ▶ 8/14/01

Handwritten signature (X) ▼

x Winnie Yip

Certificate will be mailed in window envelope to this address:

Name ▼
RICHARD A JOEL, ESQ

Number/Street/Apt ▼
496 KINDERKAMACK ROAD

City/State/ZIP ▼
ORADELL, NJ 07649

MAIL TO
Library of Congress
Copyright Office
101 Independence Avenue S.E.
Washington, D.C. 20559-6000

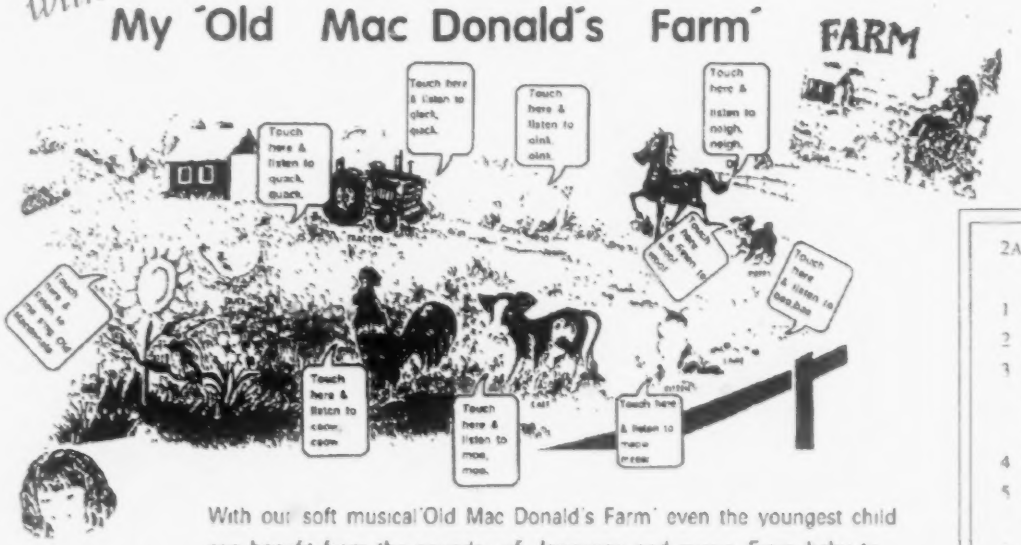
* 17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

June 1999—200,000
WEB REV: June 1999

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-47

Touch, Listen & Learn Book Mats ©

with Sing, Sing, Sing, Along My 'Old Mac Donald's Farm'


FARM
Touch here & listen to quack, quack.
Touch here & listen to cluck, cluck.
Touch here & listen to oink, oink.
Touch here & listen to neigh, neigh.
Touch here & listen to moo, moo.
Touch here & listen to baa,baa
Touch here & listen to cock-a-doodle-doo
Touch here & listen to cow, cow.
Touch here & listen to moo, moo.
Touch here & listen to neigh, neigh.

With our soft musical 'Old Mac Donald's Farm' even the youngest child can benefit from the sounds of language and music. From baby to preschooler, our series of audible books including the A-B-C, 1-2-3 and other educational stories, will help children develop an early love of reading. Let the fun and learning begin!

2AA Batteries Required (Not Included)

1. Open the door
2. Remove fabric flap
3. Using a Phillips head screwdriver, open battery case
4. Insert 2AA batteries
5. Screw case cover back on
6. Place battery case back inside the bag
7. Slide back into the door
8. Enjoy!

Recommended Age: 6 months and up

Handmade in China. All new materials. 65% Polyester, 35% Cotton. Surface washable

Waming: Plastic carrying case is not a toy. Keep away from children at all times.

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

FORM TX
For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

TXu 1-123-686

TXU 1123686

EFFECTIVE DATE OF REGISTRATION

5 17 02
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

ABC

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼
WAI YPI INT'L CORP

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
ENTIRE CONTENTS OF TEXT

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
2002 ◀ Year in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ Day ▶ Year ▶ ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼ WAI YPI INT'L CORP
58 WEST SADDLE RIVER ROAD
SADDLE RIVER, NJ 07458

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED
MAY 17 2002

ONE DEPOSIT RECEIVED
MAY 17 2002

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ▶ Complete all applicable spaces (numbers 5-9) on the reverse side of this page. See detailed instructions. Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of

EXAMINED BY: [illegible] FORM TX

CHECKED BY: /

CORRESPONDENCE: ☐ Yes — FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? **5**

☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form.

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▶ Year of Registration ▶

DERIVATIVE WORK OR COMPILATION **6**

Preexisting Material. Identify any preexisting work or works that this work is based on or incorporates. ▼ a

Material Added to This Work. Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼ b

See instructions before completing this space.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. **7**

Name ▼ Account Number ▼ a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼ b

JOEL & JOEL, LLP
RICHARD A. JOEL, ESQ.
496 KINDERKAMACK ROAD
ORADELL, NJ 07649

Area code and daytime telephone number ▶ 201-599-0588

Fax number ▶ 201-599-0179

Email ▶ RJOELSR@ATT.NET

CERTIFICATION* I, the undersigned, hereby certify that I am the **8**

☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☑ authorized agent of WAI YIP INT'L CORP

Check only one ▶

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

WINNIE YIP

Date ▶ 05/07/02

Handwritten signature (X) ▼

X [signature]

Certificate will be mailed in window envelope to this address:

Name ▼
RICHARD A. JOEL, ESQ.

Number/Street/Apt ▼
496 KINDERKAMACK ROAD

City/State/ZIP ▼
ORADELL, NJ 07649

9

Complete all necessary spaces
Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

Mail to:
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

As of July 1, 1999, the filing fee for Form TX is $30

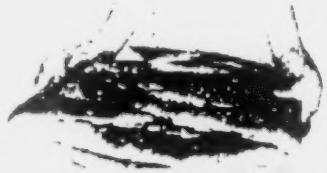
17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

June 1999—300,000
WEB REV: June 1999

☆ U.S. GOVERNMENT PRINTING OFFICE: 1999-454-875/43

, Listen & Learn©

with "My BC Book"



With our colorful books, filled with pictures and sounds, even the youngest child can learn that the sounds we hear are associated with the letters we see. Studies have shown that this can directly lead to raising children who are *reading ready and ready to learn*

From baby to preschooler, our series of soft audible books including the A-B-C, Farm Animals, 1-2-3 and other educational stories, will help children develop an early love of reading leading to success in school

Recommended Age: 6 months and up.
Handmade in China. All new materials, 65% Polyester, 35% Cotton. Surface washable

Warning: Plastic carrying case is not a toy. Keep away from children at all times.

2 AA Batteries Required
(Not Included)

1. Open the door
2. Remove fabric bag
3. Using a Phillips head screwdriver, open battery case
4. Insert 2 AA batteries
5. Screw case cover back on
6. Place battery case back inside the bag
7. Slide back into the door
8. Enjoy!

ISBN 0-9723440-0-4

App. 7

CERTIFICATE OF REGISTRATION

sent to client 1/17/03

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FILE

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VAu 557-895

EFFECTIVE DATE OF REGISTRATION
6-24-2002
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼
OLD MacDONALD'S FARM

NATURE OF THIS WORK ▼ See instructions
PLUSH PLACEMAT

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

a
NAME OF AUTHOR ▼
AUDREY L. STORCH

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ▶ US
Domiciled in ▶

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Check appropriate box(es). **See instructions**
☒ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

b
NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ▶
Domiciled in ▶

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es). **See instructions**
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

a **Year in Which Creation of This Work Was Completed**
2001
Year in all cases.
This information must be given

b **Date and Nation of First Publication of This Particular Work**
Complete this information ONLY if this work has been published.
Month ▶ Day ▶ Year ▶
Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Audrey L. Storch
P.O. BOX 2130
Wayne, NJ 07470-2130

See instructions before completing this space.

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED
JUN 24, 2002
ONE DEPOSIT RECEIVED
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

DO NOT WRITE HERE

MORE ON BACK ▶ · Complete all applicable spaces (numbers 5-9) on the reverse side of this page. · See detailed instructions. · Sign the form at line 8.

Page 1 of ___ pages

JPM00113

EXAMINED BY | FORM VA

CHECKED BY

☐ CORRESPONDENCE Yes | FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?
Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼
☐ This is the first published edition of a work previously registered in unpublished form.
☐ This is the first application submitted by this author as copyright claimant.
☐ This is a changed version of the work, as shown by space 6 on this application.
If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a

See instructions before completing this space.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

b

Eric A. LaMorte
P.O. BOX 434
Yardley, PA 19067

Area code and daytime telephone number ▶ (215) 321-6772 Fax number ▶ (215) 321-4595

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the:
Check only one ▶
☐ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☑ authorized agent of Audrey L. Storch
Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Eric A. LaMorte Date ▶ May 21, 2002

Handwritten signature (X) ▼

X

Certificate will be mailed in window envelope to this address:

Name ▼
LaMORTE & ASSOCIATES

Number/Street/Apt ▼
P.O. BOX 434

City/State/ZIP ▼
YARDLEY, PA 19067

YOU MUST:
• Complete all necessary spaces
• Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE:
1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

As of July 1, 1999, the filing fee for Form VA is $30.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

June 1999—100,000
WEB REV June 1999

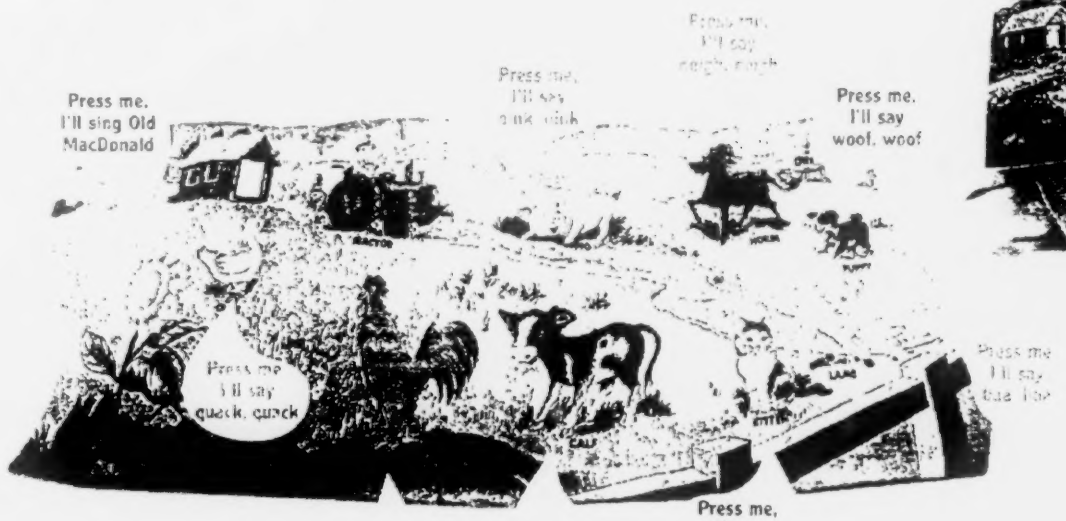
PRINTED ON RECYCLED PAPER

☆U.S. GOVERNMENT PRINTING OFFICE: 1999 454-879/71

Old MacDonald's Farm Singing Book

Sing, Sing a Song, Open Up and Sing Along.....

Go ahead and press the pig, press the cat, press each one and have yourself lots and lots of fun.



- 2 AA batteries required (not included)
- #0-small Phillips head screwdriver needed for battery insertion

Instructions for
Battery Installation

1. Open up back
2. Open the barn door
3. Remove bag containing battery pack
4. Using a phillips head screwdriver open battery case
5. Insert 2 AA batteries
6. Screw case cover back on
7. Place battery case back inside bag
8. Slide back into barn door
9. Close velcro door
10. Enjoy

WARNING
Do not mix old and new batteries
Do not mix alkaline, standard (carbon-zinc) or rechargeable (nickel-cadmium) batteries

CE

Distributed by JAAM, LLC
PO Box 2130, Wayne, NJ 07470

Recommended Ages: 6 months and up
Handmade in China. All new materials: 65% polyester, 35% cotton
reg. no. pa-8765(fc)
Warning: Plastic carrying case is not a toy. Keep away from children at all times

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records

Marybeth Peters

Register of Copyrights, United States of America

FORM VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VAu 701-286

[redacted]

EFFECTIVE DATE OF REGISTRATION
5 (Month) 30 (Day) 06 (Year)

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼
The Singing ABC Book

NATURE OF THIS WORK ▼ See instructions
Cover and content images and sounds

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼
Audrey L. Storch

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ▶ USA
Domiciled in ▶ USA

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es) See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NOTE
Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR { Citizen of ▶
Domiciled in ▶

Was This Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Check appropriate box(es) See instructions
☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

3 a Year in Which Creation of This Work Was Completed
2002 ◀ Year
This information must be given in all cases.

b Date and Nation of First Publication of This Particular Work
Complete this information Only if this work has been published.
Month ▶ Aug. Day ▶ 15 Year ▶ 2003
USA ◀ Nation

4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
Audrey L. Storch
P.O Box 2130
Wayne NJ 07470-2130

See instructions before completing this space.

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED
MAY 30 2006
ONE DEPOSIT RECEIVED
MAY 30 2006
TWO DEPOSITS RECEIVED
FUNDS RECEIVED

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions. • Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

*Amended by CO, authority of Eric LaMorte from phone call on 7/20/06.

EXAMINED BY _____ FORM VA

CHECKED BY _____

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? 5

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼

a. ☐ This is the first published edition of a work previously registered in unpublished form

b. ☐ This is the first application submitted by this author as copyright claimant.

c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. 6

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

a

See instructions before completing this space.

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. 7

Name ▼ Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

b

Eric A. LaMorte
P O Box 434
Yardley, PA 19067-8434

Area code and daytime telephone number ▶ (215) 321-6772 Fax number ▶ (215) 321-4595

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the 8

check only one ▶

- ☐ author
- ☐ other copyright claimant
- ☐ owner of exclusive right(s)
- ☑ authorized agent of Audrey L. Storch

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Eric A. LaMorte Date ▶ March 15, 2006

Handwritten signature (X)

x _____

Certificate will be mailed in window envelope to this address:

Name ▼
LaMorte & Associates, P.C.

Number/Street/Apt ▼
P.O. Box 434

City/State/ZIP ▼
Yardley, PA 19067-8434

9

- Complete all necessary spaces
- Sign your application in space 8

1. Application fees
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

Mail to: Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559-6000

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

June 1988—180,000
WEB REV. June 1988

PRINTED ON RECYCLED PAPER

☆U.S. GOVERNMENT PRINTING OFFICE: 1988-454-879/71

Singing ABC Book

Our Singing ABC Books are intended for children 18 months and up. A playful scene shows animals and children at play, A through Z! Press the choir and hear an "ABC Song" in a playful child's voice, or press any of the 26 items to hear the letter and its name. 27 sounds in all! Requires two AA batteries (not included)

"O" OWL
The Owl sleeps all day!

"H" HORSE
The Horse is looking for his friend!

"J" JAGUAR
The Jaguar lives in the jungle!

"V" VEGETABLES
Vegetables are delicious!

Press your friends to hear our wonderful ABC song!

JAM™

Patent Pending
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P.O. BOX 2130, Wayne, NJ 07470

Instructions for Battery Installation

1. Open up book
2. Open door on the Tree
3. Remove bag containing battery pack.
4. Using a small Phillips Head screwdriver, open battery case
5. Insert 2 AA alkaline batteries
6. Screw case cover back on
7. Place battery case back inside bag, on to velcro strip
9. Close door on the Tree
10. Enjoy!

6 86196 27295 9

Recommended Ages 18 months and up
Handmade in China. All new materials
65% cotton, 35% polyester
reg. no. pa-8785(rc)

- 2 AA batteries required (not included)
- Size 0 Phillips Head screwdriver needed for battery insertion
- Do not mix new and used batteries
- Do not mix alkaline and cadmium batteries
- Do not mix rechargeable and non rechargeable batteries

Warning: Plastic carrying case is not a toy
Keep away from children at all times

COPYRIGHT ASSIGNMENT AGREEMENT *NUNC PRO TUNC*

This COPYRIGHT ASSIGNMENT AGREEMENT is by and between Audrey Storch an individual with an address of 8 Mayfair Drive, Wayne, New Jersey ("Assignor") and JAAM,LLC, a limited liability company formed under the law of New Jersey ("Assignee").

WHEREAS, Assignee is desirous of confirming its ownership and acquiring the entire right, title, and interest in and to certain Intellectual Property rights in the Old MacDonald's Farm children's plush sound book and as further identified in Schedule A and as embodied in U.S. Copyright Registration No. VAu 557-895 (the "Work");

WHEREAS, Assignee is desirous of acquiring the entire right, title, and interest in and to the Work and any and all Intellectual Property related thereto;

NOW, THEREFORE, for and in consideration of the sum of One Dollar ($1.00) paid to Assignor by Assignee, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, Assignor and Assignee, nunc pro tunc and effective as of June 24, 2002 agree as follows:

1. Assignor does hereby grant, sell, transfer, assign, convey and set over unto the Assignee, Assignee's successors, and assigns or other legal representatives, the entire right, title, interest, ownership, and all subsidiary rights in and to any rights Assignor is considered to have in the Work, including all intellectual property relating to the Work, and the right to secure copyright registration(s) in Assignee's name as claimant and the right to secure renewals, reissues, and extensions of any such copyright(s) or copyright registration(s) in the United States of America or any other country, including without limiting the generality of the foregoing, U.S. Copyright Registration No. VAu 557-895. The Assignee's successors and assigns or other legal representatives all rights or other causes of action that Assignor had or may have had against any third party who may have infringed the copyright subsisting in the said Work (including the right to collect any amounts due to Assignor relating to the use of the Work).

2. Assignor does also hereby grant, sell, transfer, assign, convey and set over unto the Assignee, Assignee's successors, and assigns or other legal representatives any and all "Moral Rights" that Assignor may have related to the Work.

Assignor hereby fully waives and agrees never to assert any Moral Rights Assignor may have related to the Work or any derivative works based on the Work in any medium.

3. Assignor confirms that by this instrument Assignee and Assignee's successors and assigns shall own the entire right, title, and interest in and to the Work, including the right to reproduce; to prepare derivative Work based upon the Work; to distribute by sale, rental, lease, or lending, or by other transfer of ownership; to perform publicly; and to display, whether or not the Work constitutes a "work made for hire" as defined in 17 U.S.C. Sections 101 and 201(b).

4. Assignee, in its sole discretion, shall determine whether copyright(s) in Work shall be preserved and maintained or registered in the United States of America or any other country.

5. Assignor agrees to take all actions and cooperate as is necessary to protect the copyrights in the Work and further agrees to execute any documents necessary to perfect Assignee's ownership of copyrights in the Work and the registration thereof, without further compensation by Assignee.

6. All terms of this Agreement are applicable to each portion or part of the Work, as well as to the Work in their entirety.

7. This Agreement constitutes the entire agreement between the parties hereto as relating to the ownership of the Work and all Intellectual Property rights related thereto, and supersedes any prior oral or written agreement or understanding between the parties.

8. This Agreement is to be interpreted under the United States copyright law.

ASSIGNOR
Audrey Storch

Date: 8-13-07

By: Audrey Storch

ASSIGNEE
JAAM,LLC

Date: 8-13-07

By: Audrey Storch
Name: Audrey Storch
Title: Member

JUDGES: Katharine S. Hayden , U.S.D.J.

OPINION BY: Katharine S. Hayden
OPINION

Katharine S. Hayden , U.S.D.J.

Plaintiff Wai Yip International Corp. ("Wai Yip") appeals from Magistrate Judge Patty Shwartz's September 4, 2007 order (docket entry # 42) denying its motion for leave to file an amended complaint re-joining defendant Audrey Storch. Plaintiff argues that Storch should be re-joined, and thus subject to personal liability for copyright infringement, because she acted as an independent contractor and not an employee of defendant JAAM, LLC ("JAAM") under the work for hire doctrine. In its haste to deal with the nuances of the work for hire doctrine, Wai Yip fails to address the central inquiry on appeal, which is determining whether Judge Shwartz properly denied its motion in accord with Foman v. Davis and its progeny.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Wai Yip is a closely-held New Jersey corporation that sells children's books. (Compl. P 1.) Audrey Storch is an employee and a principal shareholder [*2] of defendant JAAM, which is a gift and toy manufacturer incorporated under the laws of the State of New Jersey. (Def.'s Br. Mot. Dismiss 4.) JAAM's products include singing toys and playmats for children.

Wai Yip's suit alleges that JAAM and Audrey Storch infringed on certain patented and copyrighted material by manufacturing and selling children's "sound books" that Wai Yip invented. (Compl. P 1.) Wai Yip contends it patented a design for children's books that has "a fabric covering with sound chips positioned therein and an overlapping cover which closes and locks due to hook and loop fasteners." (Compl. P 6.) The sound chips emit appropriate sounds when "a particular representation is contacted." Wai Yip also alleges that JAAM owes it monies "on a certain book account," indicating that the parties have done business in the past. (Compl. P 21.) This Court has been unable to locate information in the record about the origin of the relationship between the two corporations, and thus the circumstances that form the basis for this suit are unclear.

The parties have indulged in bewildering motion practice and engaged in tactics that manifest a disregard for the practices of this Court. [*3] After litigating for two years in state court, punctuated by an unsuccessful attempt to remove to federal court, Wai Yip filed its complaint in this matter on October 19, 2006. The original complaint named Audrey Storch as a defendant, and alleged "patent infringement" and "copyright, unfair trade practices, and unfair competition." On March 22, 2007, JAAM filed a motion to dismiss (docket entry # 9) along with its answer raising affirmative defenses and counterclaims (docket entry # 10), and Wai Yip filed an amended complaint that included Audrey Storch and Michael Storch as defendants (docket entry # 11). Because both pleadings ran afoul of procedural rules, this Court denied without prejudice JAAM's motion to dismiss and struck Wai Yip's amended complaint by an order dated March 23, 2007 (docket entry # 12).

After an April 17th scheduling conference, Magistrate Judge Shwartz entered a scheduling order requiring that the parties serve Rule 26 disclosures on or before May 7th and serve any written discovery requests on or before May 14th (docket entry # 15). This order also set a May 22nd deadline for Wai Yip to produce to JAAM documents that "demonstrate that plaintiff transacted [*4] with Mr. and Mrs. Storch in their individual capacities as opposed to their capacities as representatives of JAAM, LLC."

Wai Yip failed to comply with Judge Shwartz's April 17th order in two significant ways: (1) its attorney failed to attend the May 22nd settlement conference scheduled by the order; and (2) Wai Yip did not produce any evidence, by the May 22nd deadline, that it ever transacted with Audrey and/or Michael Storch in their individual capacities (docket entry # 17). At that point, Wai Yip had also failed to provide its Rule 26 disclosures, serve discovery demands, and pay sanctions for its attorney's failure to appear at the Rule 16 conference. Judge Shwartz issued an order addressing Wai Yip's noncompliance: No later than May 30, 2007, [Wai Yip's attorney] shall submit documentation to show why he was unable to appear on May 22, 2007 and why he was unable to contact the Court or [JAAM] about his inability to appear;

No later than June 22, 2007, [Wai Yip] shall submit a letter showing cause why the Undersigned should not ommend to the United States District Judge that Her Honor dismiss the claims against defendant Storch for failing to produce evidence that shows that [*5] the plaintiff transacted business with Mr. and Mrs. Storch in their individual capacities as opposed to their capacities as representatives of JAAM required by the Order dated May 22, 2007.

On May 28, 2007, Wai Yip's attorney submitted a certification (docket entry # 18) explaining that he missed the May 22nd settlement conference because he had been hospitalized and had no means of contacting JAAM or Judge Shwartz. But the certification ignored the other requirement in the May 23rd order that Wai Yip "submit a letter showing cause why the Undersigned should not recommend to the United States District Judge that Her Honor dismiss the claims against defendant Storch."

Instead, on June 29, 2007, Wai Yip filed a "motion for leave to amend the complaint," which again offered no evidence that it transacted business with the Storch defendants in their individual capacities (docket entry # 29). On July 10, 2007, this Court entered an order dismissing Audrey Storch without prejudice (docket entry # 33), noting that Wai Yip consented on the record on June 28 before Judge Shwartz to dismiss Audrey Storch without prejudice because it had failed to provide documents showing that [*6] it transacted business with her in her individual capacity. On August 9, 2007, Wai Yip filed another motion for leave to amend the complaint (docket entry # 39). On August 13, 2007, Audrey Storch, apparently in response to this latest attempt to add her as a defendant, executed assignments transferring any and all of her interests in the children's books at issue to JAAM. (Copyright Assignment Agreements Nunc Pro Tunc, attached to Certification of Counsel as Exhibit M, docket entry # 45.7.) Wai Yip's August 9th motion, unlike its previous attempts to amend the complaint, included certificates of registration with the United States Copyright Office that list Audrey Storch as the copyright claimant for the sound books, claiming these documents are evidence of Audrey Storch acting in her personal capacity.

After consideration of Wai Yip's August 9th motion for leave to amend, JAAM's August 27th brief opposing the motion for leave, and the arguments and representations of counsel during a September 4th teleconference, Judge Shwartz entered an order denying Wai Yip's motion for leave to amend its complaint (docket entry # 42). This appeal followed.

II. STANDARD OF REVIEW

Local Civil Rule 72.1(c)(1)(A) HN1 [*7] provides that a non-dispositive Magistrate Judge's order may be set aside only if that order is "found to be clearly erroneous or contrary to law." A finding is considered clearly erroneous "'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Lo Bosco v. Kure Eng'g Ltd., 891 F. Supp. 1035, 1037 (D.N.J. 1995) (Wolin, J.) (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746 (1948). Motions to amend are generally considered non-dispositive. Thomas v. Ford Motor Co., 137 F. Supp. 2d 575, 579 (D.N.J. 2001) (Orlofsky, J.). Here, nothing in the record or the parties' submissions, and in particular Wai Yip's skimpy supporting brief, suggests that the motion to amend at issue is dispositive. Denial does not extinguish any of Wai Yip's claims because it can still proceed against JAAM, the real party in interest, and denial does not affect discovery. Also, Judge Shwartz noted on the record that "[t]here's nothing in front of the Court that suggests that [JAAM] is not viable and can't satisfy a judgment." (Teleconference Tr. 51:14, Sept. 4, 2007.)

Fed. R. Civ. P. 15(a) [*8] HN2 permits a party to amend a pleading once as a matter of course before a responsive pleading is served. "Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Id. In Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), the Supreme Court of the United States carved out the discretionary boundaries for granting leave to amend a pleading by setting forth several factors that should shape the judge's decision, including "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment." Because the rule mandates that leave be "freely given," "the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." Id. Foman establishes both that the grant or denial [*9] of a motion to amend is discretionary, and that a court must provide reasons for denying a motion to amend in line with the factors discussed there.

HN3 Against the background of the deferential "clearly erroneous" standard for appealing a non-dispositive order, this Court need only determine whether Judge Shwartz abused her discretion in denying Wai Yip's motion.

III. DISCUSSION

Not withstanding the focus of the required legal analysis, Wai Yip spends the entirety of its brief on appeal arguing that Audrey Storch is liable for copyright infringement under the work for hire doctrine because she "was not an employee of JAAM, LLC but an independent contractor." This argument misses the mark and would still fail even if it were the appropriate issue to address in appealing Judge Shwartz's order.

The September 4th teleconference that is the basis for this appeal was held to clarify the position taken by Wai Yip in its August 9th "motion for leave to amend complaint to add Audrey Storch as a defendant." The moving papers for that motion contended that Audrey Storch faces personal liability because she put her own name on the certificates of registration with the United States Copyright Office as [*10] the copyright claimant for the sound books. JAAM's opposition memorandum argued, inter alia, that Wai Yip's failure to comply with Judge Shwartz's orders to produce evidence of Audrey Storch's liability, for which Wai Yip has never offered an excuse, constitutes bad faith and undue delay (Def.'s Opp. Br. 6, docket entry # 45). JAAM also pointed out that Audrey Storch has no interest in the copyrights at issue because she fully assigned any and all interest to JAAM. (Def.'s Opp. Br. 9.)

During the September 4th teleconference, Judge Shwartz put her reasons for denying the motion on the record. She was particularly concerned with the protracted back and forth between Wai Yip, the Court, and JAAM regarding Wai Yip's several motions to amend its complaint.

Wai Yip redoubled its efforts during the teleconference, still without offering any excuse for its delay in producing the evidence, by arguing that the assignments are invalid because they were executed during the course of this litigation. When asked by Judge Shwartz whether he had any legal support for this argument, Wai Yip's attorney admitted that he did not (Teleconference Tr. 45:7-10.) Judge Shwartz noted that the assignment is [*11] valid "even though there's litigation pending so long as there's -- it's not being done as a fraudulent conveyance to attempt to dissipate assets or do something to the detriment of the potentially victorious plaintiff." (Teleconference Tr. 44:7-10.) Judge Shwartz reasoned, "[w]hat I don't want to do is waste effort concerning the liability of the individual, if, in fact, the assignment would mean that any recovery by plaintiff, if plaintiff is successful, is coming from JAAMs, because the plaintiff -- the defendant -- individual defendant or proposed defendant here has no interest in it anymore."

HN4 The Third Circuit has interpreted Foman to mean that "[i]n the absence of substantial or undue prejudice, denial must be grounded in bad faith or dilatory motives, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment." Heyl & Patterson International, Inc. v. F. D. Rich Housing, Inc., 663 F.2d 419, 425 (3d Cir. 1981). Here, Judge Shwartz determined that denial of Wai Yip's motion does not result in prejudice to Wai Yip or to JAAM. (Teleconference Tr. 51:14-23.) And after considering the absence of prejudice to either [*12] party, Judge Shwartz concluded that "when the Court considers prejudice, undue delay, and particularly undue delay, the Court is not persuaded that the delay that would inevitably result from this -- challenging this assignment to maybe be successful warrants the inclusion of this individual on what would only be the copyright claim."

This Court will not disturb Judge Shwartz's determination that it would constitute undue delay to grant Wai Yip's motion for leave to amend its complaint to rejoin Audrey Storch as a defendant, because her ruling, as required by Foman and Heyl, was based on the sound reasoning that granting the motion would further muddle this litigation with the issue of whether the assignments are valid even though Judge Shwartz found that there is little to no evidence that: (1) JAAM could not satisfy a judgment; (2) the assignments were executed in bad faith; and (3) Audrey Storch was ever a real party interest. This Court finds it particularly significant that Wai Yip's attorney could not cite to any legal authority or establish any factual grounds addressing the validity of the assignments both during the teleconference and in support of this appeal. Given the teeth-pulling [*13] needed to get to this point, this Court cannot say that Judge Shwartz abused her discretion when she concluded that granting the motion would result in undue delay.

Based on the foregoing, Judge Shwartz's ruling is affirmed. An appropriate order will be entered.

Dated: November 20, 2007

/s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PING YIP and CHEUNG FUNG TSANG,

Civil Action No. 08-2370(SDW)

Plaintiffs,

v. ORDER

AUDREY L. STORCH,

Defendant. June 2, 2008

WIGENTON, District Judge.

This matter comes before the Court sua sponte.

Plaintiffs, Ping Yip and Cheung Fung Tsang ("Plaintiffs"), filed an Order to Show Cause application ("Application") on May 21, 2008. On that date, the Court oral argument on Plaintiffs' Application and found that it lacked jurisdiction to rule on the matter as Defendant has filed for bankruptcy. Consequently, the Court denied Plaintiffs' Application and advised that any further fillngs related to Defendant's bankruptcy should be filed in the U.S. Bankruptcy Court. On the same date as the Court's decision, Plaintiffs filed a Motion for Bankruptcy Fraud directly related to Defendant's pending bankruptcy.

IT IS THEREFORE, on this 2nd day of June 2008,[1]

ORDERED that Plaintiffs' Motion for Bankruptcy Fraud be DISMISSED without prejudice for lack of jurisdiction based on Defendant's pending bankruptcy filing.

s/Susan D, Wigenton, U.S.D.J

---

[1] This Motion corresponds to docket entry s.

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-2(c)	
In Re: JAAM,	Case No: 08-13514 Hearing Date: JULY 29, 2008 Judge: STECKROTH Chapter: 7

Recommended Local Form: ☑ Followed ☐ Modified

ORDER VACATING STAY

The relief set forth on the following page is hereby ORDERED.

DATED: 7/30/2008

Honorable Donald H. Steckroth
United States Bankruptcy Judge

Upon the motion of Cheung Fung Tsang under Bankruptcy Code section 362(a) for relief from the automatic stay as to certain property as hereinafter set forth, and for cause shown, it is

ORDERED that the automatic stay is vacated to permit the movant to institute or resume and prosecute to conclusion one or more actions in the court(s) of appropriate jurisdiction to pursue the movant's rights in the following:

☐ Real property more fully described as:

☑ Personal property more fully described as:
Lawsuit: Case No. 2:06-cv-05032-ksh-ps

It is further ORDERED that the movant may join the debtor and any trustee appointed in this case as defendants in its action(s) irrespective of any conversion to any other chapter of the Bankruptcy Code.

The movant shall serve this order on the debtor, any trustee and any other party who entered an appearance on the motion.

Rev 7/04 jml

Approved by Judge Donald H. Steckroth July 30, 2008

AO 120 (Rev. 3/04)

TO:	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court _____ on the following ☐ Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
08-4746 (KSH)	9-23-08	Newark, N.J.

PLAINTIFF	DEFENDANT
Ping Yip (Winnie)	HUGS TO GO LLC (Tax #0600315652) Audrey L. Storch

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	US 6,641,170 B2	NOV 4, 2003	Winnie Yip
2	TX 1-059-189	8-24-01	WAI YIP Int'l. Corp.
3	TX1-123-58	5-17-02	WAI YIP Int'l. Corp.
4	VAu 557-895	6-24-02	Audrey L. Storch
5	VAu 701-286	5-30-06	Audrey L Storch

In the above—entitled case, the following patent(s)/ trademark(s) have been included.

DATE INCLUDED	INCLUDED BY ☐ Amendment ☐ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued.

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
WILLIAM T. WALSH	DIANNE C. RICHARDS	10-9-08

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PING YIP,

Plaintiff, Civil Action No. 08-4746 (KSH)

v. ORDER

HUGS TO GO, ET AL.,

Defendants.

This matter having come before the Court by way of application/petition of the defendants to dismiss this case and for sanctions;

and the Court having reviewed the docket and the submissions of the parties;

and the Court having further considered the other cases that plaintiff or her company have filed against defendant Storch and businesses allegedly associated with defendant Storch;

and it appearing that the claims lodged against defendant Storch are no different from the claims plaintiff or her company sought to lodge against defendant Storch and/or sought to pursue against defendant Storch's company, Jaam,LLC, in Civ. No. 06-5032(KSH), Civ. No 08-2370(SDW), and Bankruptcy No. 08-13514(DHS); [1]

[1] The Court notes that the plaintiff or her company have brought claims jaam or other defendants involving the product at issue in this case. See Civ. 06-3674(KSH), 08-2876(FSH), and 09-1293(FSH).

and the Court adopting the observations of the Hon. Susan D. Wigenton when she conducted oral argument on a similar application in Civ. No. 08-2370, see Transcript, dated July 28, 2008;

and the disposition in these three cases barring further claims against defendant Storch arising from the facts on which those cases were based under the doctrine of res judicata/claim preclusion, see Mullarkey v. Tamboer, 536 F. 3d 215, 225 (3d Cir. 2008)(observing that the doctrine applies to both claims brought in as well as those that could have been brought in a previous suit for which there has been: (1) a final judgment on the merits; (2) involving the same parties; and (3) a later case based upon the same cause of action); [2]

and review of the allegations against defendant Hugs to Go failing to show that Hugs to Go existed at the time of the acts about which plaintiff complains or that itself engaged in acts associated with the books that plaintiff contends are covered by the patent;

[2] To the extent it applies to a federal claim of patent infringement, the entire controversy doctrine may serve as an additional basis for precluding plantiff from proceeding against defendant Storch in this case as claims raised here that could have been raised in an earlier filed case, such as Civ. No. 08-2370.

and the Court therefore finding that the Complaint against Hugs to Go does not meet the pleading requirements of Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007) (stating that Fed. R. Civ. p. 8 requires a pleading to "contain...a short and plain statement of the claim showing that the pleader is entitled to relief" so as to "give the defendant fair notice of what the... claim is and the grounds upon which it rests");

and given plaintiff's pro se status, the Court will give plaintiff an opportunity to amend her Complaint against Hugs to Go so that she may set forth the facts upon which she contends Hugs to Go has violated the patent;

and the Court declining to grant defendant Hugs to Go's request for sanctions at this time as it is permitting the plaintiff to attempt to cure the deficiencies in its Complaint against defendant Hugs to Go;

and the Court declining to grant defendant Storch's request for sanctions because this ruling has ended this case against her and would be akin to the ultimate sanction a party could receive in civil case;

and the Court notifying plaintiff, however, that future filings against defendant Storch that mimic this Complaint or that embody the claims already

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[3] The Court notes that the frequency and redundancy of plaintiff's filings has resulted in an Order that barred her from marking filings in the bankruptcy case. Bankruptcy No. 08-13514(DHS), Docket No. 105, Order, dated September 15, 2009.

the subject of the complaints that plaintiff or her company attemoted to pursue against defendant Storch in Civ. No. 06-5032(KSH), Civ. No. 08-2370(SDW), and Bankruptcy No. 08-13514(DHS), may result in sanctions;
and for good cause show.

IT IS ON THIS 28th day of September 2009
ORDERED that application/petition to dismiss the claims against defendant Storch [Docket No. 8] is granted;

IT IS FURTHER ORDERED that, no later than October 13, 2009, the plaintiff shall file an Amended Complaint against Hugs to Go that sets forth the facts that provide a basis to assert that it has violated the patent laws by selling the books covered by the patent and describes the proof upon which the plaintiff will rely to support this assertion. Failure to submit an Amended Complaint by October 13, 2009 with the detail set forth herein as required by Twombly will result in a dismissal of the claims against defendant Hugs to Go;

IT IS FURTHER ORDERED that defendants' request for sanction is denied without prejudice; and

IT IS FURTHER ORDERED that no discovery may proceed unless and until the Amended Complaint is filed and served, and Answer is filed, and a Pretrial Scheduling Order is entered addressing discovery and other pretrial tasks.

s/ Katharine S. Hayden
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PING YIP

Plaintiff Civil Action No. 08-4746 (KSH)

v. ORDER

HUGS TO GO, ET AL,
Defendants

This matter having come before the Court on its review of the docket;

and it appearing that the plaintiff has filed an Amended Complaint by the deadline set in the Order dated September 28, 2009;

and the Order specifically directing plaintiff to file an Amended Complaint limited to claims against Hugs to Go;

and the defendant, in contravention of the Order, filed claims against defendant Storch;

and the defendant having also added defendant JAAMs;

and the claims against defendant JAAMs having been addressed in 06-5032(KSH) and Bankruptcy No. 08-13514(DHS) and the resolution of those cases bar plaintiff from bring suit against this entity that are based upon the same facts upon which these cases were based;

and the Court granting the plaintiff one additional opportunity to file an Amended Complaint against Hugs to Go because of her pro se status with the detail described in the Order dated September 28, 2009;

and for the reasons set forth in the Order dated September 28, 2009;

IT IS THEREFORE ON THIS 14th day of October, 2009

ORDERED that the Amended Complaint [Docket No. 14] is struck because it fails to comply with the Order date September 28, 2009; and

IT IS FURTHER ORDERED that, no later than October 27, 2009, the plaintiff shall file an Amended Complaint against Hugs to Go only that set forth the facts that provide a basis to assert that it has violated the patent laws by selling the books covered by the patent and describes the proof upon which the plaintiff will rely to support this assertion. Failure to submit an Amended Complaint by October 27, 2009 with the detail set forth herein as required by Twombly will result in a dismissal of the claims against defendant Hugs to Go.

s/ Katharine S. Hayden
UNITED STATES DISTRICT JUDGE

CLOSING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PING YIP

Plaintiff Civil Action No. 08-4746 (KSH)

v. ORDER

HUGS TO GO, ET AL,
Defendants

This matter having come before the Court on its review of the docket;

and the plaintiff having filed an Amended Complaint that again seek to name Audrey Storch and JAAM and fails to set forth the facts concerning her claim against Hugs To Go;

and the Amended Complaint therefore failing to comply with the Orders that precluded naming Ms. Storch and JAAM and required that the plaintiff set forth the facts that support her claim against Hugs To Go;

and the Amended Complaint therefore violating the Order dated October 14, 2009;

and the plaintiff being place on notice of the consequence of noncompliance with the October 14, 2009 Order;

and for the reasons set forth in the Order dated September 28, 2009 and October 14, 2009;

IT IS THEREFORE ON THIS 29th day of October, 2009

ORDERED that the Amended Complaint [Docket No. 25] is struck; and

IT IS FURTHER ORDERED that the claims against defendant Hugs to Go is dismissed for to meet the Twombly pleading standard and the claims against all other defendants are dismissed for the reasons set forth in the Order dated September 28, 2009.

s/ Katharine S. Hayden
UNITED STATES DISTRICT JUDGE

Ping Yip
58 West Saddle River Road
Saddle River NJ 07458
Tel: 201-995 0838 Fax: 201 995 0839
Cell: 201-316 6270
E-Mail: Yip510@aol.com

U.S. DISTRICT COURT
2009 NOV -5 P 12: 15

Katharine S. Hayden
United Stated District Judge
Martin Luther King JR
Federal Building & U.S. Courthouse
50 Walnut Street Newark, NJ 07101

November 3, 2009

Case No 08-4746(KSH)

Dear Judge Hayden:

I request that you explain to me why Defendant Audrey L. Storch was dismissed from Case No. 06-5032 (KSH), and Case Number: 2:08-CV-4746 (ksh). The United Stated Copyright Law Chapter 5, §506 clearly states that Defendant Audrey L. Storch's actions constitute a Criminal Copyright Infringement. Audrey L. Storch willfully took the Plaintiff's patented and copyrighted books and obtained separate copyrights on them. The evidence shows that Ms. Storch obtained fake copyrights, in which she claims to be the author and owner of these two **previously copyrighted books.** The Plaintiff's evidence is both solid and compelling. It proves that Ms. Storch plagiarized the Plaintiff's work, and deceived The United States Copyright office. What is the reason that you, Judge Hayden, will not allow me to prove my case against Audrey L. Storch? On your September 28, 2009 order, you did not explain the basis for your dismissal of this case. Can you show me where in the United States Copyright Laws there exists a special exception written specifically for Audrey L. Storch?

Judge Hayden, you dismissed my case against Hugs to Go' LLC, citing "Bell Atlantic v. Twombly" 550 U.S. 554, 555 (2007), claiming that my case "does not meet the pleading requirement." This is not true. Hugs to Go' LLC is not JAAM'LLC!

They are two separate companies! Before JAAM'LLC filed for bankruptcy, Ms. Storch started up Hugs to Go'LLC. If these two companies are, as you have said, the same company then Hugs to Go' LLC must be legally responsible for all of JAAM'LLC's debts. The convincing evidence proves that Hugs to Go'LLC has continued selling these products, in violation of the Plaintiff's Copyright and Patent. Judge Hayden: it is wrong for you to dismiss Hugs to Go'LLC!

Although JAAM'LLC, Hugs to Go'LLC, and Audrey L. Storch are related, **it is you, Judge Hayden, who will not let these three Defendants combine into one case. This is in violation of rule 4:30 (Rules Governing the Court of the State of New Jersey).**

Judge Hayden: it is impossible to deny the fact that Hugs to Go and JAAM 'LLC are two separate companies! You simply cannot claim that it is the same case! Audrey L. Storch claims to be the author of these fake copyrights. But Hugs to Go, and JAAM are not authors!

Plaintiff appeals your Honor to reconsider your order, and follow the Copyright Laws! What Audrey L. Storch has done is a crime. It is exactly the same as me going to Barnes and Noble bookstore, purchasing a book, and getting a new copyright on that book, claiming that I wrote it! This is exactly what she has done with my books, and she needs to be punished for her crimes!

Respectfully submitted,

Annie Yip

Ping Yip (Winnie)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PING YIP,

Plaintiff, Civil Action No. 08-4746 (KSH)

v. ORDER

HUGS TO GO, ET AL.,

Defendants.

This matter having come before the Court by way of the plaintiff's letter labeled as a "motion for reconsideration" of the Order dated October 29, 2009, which dismissed the Complaint;

and the Court having considered the submission;

and the Court noting that the purpose of a motion for reconsideration is "to correct manifest errors of law or fact or to present newly discovered evidence," Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985); see also P. Shoenfeld Asset Mgmt. LLC v. Cendant Corp., 161 F. Supp. 2d 349, 352 (D.N.J. 2001); Yurecko v. Port Auth. Trans-Hudson Corp., 279 F. Supp. 2d 606, 609 (D.N.J. 2003);

and a court may grant a properly filed motion for reconsideration for one of three reasons: "(1) an intervening change in the controlling law has occurred, (2) evidence not previously available has become available, or (3) it is necessary to correct a clear error of law or prevent manifest injustice," Database Am., Inc. v. Bellsouth Adver. & Publ'g Corp., 825 F. Supp. 1216, 1220 (D.N.J. 1993)

(citing Weyerhaeuser Corp. v. Koopers Co., 771 F. Supp. 1406, 1419 (D.Md. 1991)); Carmichael v. Everson, Civ. No. 03-4787, 2004 WL 1587894 at * 1 (D.N.J. May 21,2004);

and Local Civ. R. 7.1(i) requiring that the moving party set forth "concisely the matters or controlling decision which counsel believes the Court has overlooked," G-69 v. Degnan, 748 F. Supp. 274, 275 (D.N.J. 1990);

and a motion for reconsideration being improper when it is used "to ask the Court to rethink what it had already thought through – rightly or wrongly," Ciba-Geigy Corp. v. Alza Corp., Civ. No. 91-5286, 1993 WL 90412, at *1 (D.N.J. Mar. 25, 1993) (citing Oritani Sav. & Loan Ass'n v. Fid. & Deposit Co. of Md., 744 F. Supp. 1311, 1314 (D.N.J. 1990), rev'd on other grounds, 989 F.2d 635 (3d Cir. 1993));

and because reconsideration of a judgment after its entry is an extraordinary remedy, motions to reconsider or reargue are granted "vest sparingly," Maldonado v. Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986); Damiano v. Sony Music Entm't, Inc., 975 F. Supp. 623, 634 (D.N.J. 1997);

and the plaintiff having failed to show that the Court overlooked any facts or law, that new evidence has been discovered, there has been an intervening change in the law, or that a manifest injustice will occur if the Order is not reconsidered;

and it appearing that the plaintiff disagrees with the Court's rulings concerning denying her permission to pursue Ms. Storch or JAAM;

and it appearing that plaintiff is requesting that the Court rethink what it already thought through and this is not an appropriate basis to seek or obtain reconsideration;

and the Court's reasons for dismissing the Complaint against Ms. Storch and JAAM being different from the reasons it dismissed the Complaint against Hugs To Go, which demonstrates the Court's recognition that JAAM and Hugs To Go were being pursued as separate parties;

and the Court having dismissed the Complaint against Hugs to Go because the plaintiff failed to comply with the Court's directives that she provide facts sufficient to withstand scrutiny under Bell Atlantic Corp. v. Twombly, 550 U.S. 554 (2007), that described the conduct in which she alleged Hugs to Go engaged;

and her present submission continuing to fail to address this directive;

and the Court having already set forth its reasons for precluding the plaintiff from attempting to reinstitute against Ms. Storch and JAAM;

and for the reasons set forth herin and in the Orders dated September 28, 2009, October 14, 2009, and October 29, 2009;

IT IS ON THIS 9th day of November, 2009

ORDERED that the motion for reconsideration [Docket No.28] is denied.

s/ Katharine S. Hayden
UNITED STATES DISTRICT JUDGE

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

PING YIP,
Plaintiff-Appellant,

v.

HUGS TO GO LLC AND AUDREY L. STORCH,
Defendants-Appellees,

AND

JAAM, LLC,
Defendant-Appellee.

2010-1112

Appeal from the United States District Court for the District of New Jersey in Case No. 08-CV-4746, Judge Katharine S. Hayden.

Decided: May 28, 2010

PING YIP, of Saddle River, New Jersey, pro se.

MICHAEL J. BROWN, Michael J. Brown Law Office LLC, of Livingston, New Jersey, for defendants-appellees.

Before NEWMAN, RADER AND PROST, *Circuit Judges*.

NEWMAN, *Circuit Judge*.

The United States District Court for the District of New Jersey dismissed the complaint, filed by Ms. Ping Yip, on the ground that she failed to meet the standard pleading requirements as to defendant Hugs to Go LLC, as discussed in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and also that she improperly named Audrey L. Storch and JAAM, LLC as defendants in violation of prior court orders and on grounds of *res judicata*. We *affirm* the dismissal, as to all defendants. The defendants' motion for sanctions is *denied*.

BACKGROUND

Ms. Yip and her company, Wai Yip International, have filed several suits against the defendant Storch and Storch's company JAAM and its successor Hugs to Go. Hugs to Go was formed when JAAM declared bankruptcy. In the present action the complaint charges that Storch and Hugs to Go infringed Yip's U.S. Patent No. 6,641,170 and U.S. Copyrights No. TXu 1-123-585 and No. TXu 1-059-189. The charges are based on the defendants' sales of children's sound-based books that are nearly identical to Yip's patented and copyrighted books entitled "Old MacDonald's Farm" and "ABC." The defendants moved to dismiss on the ground that prior suits filed by Yip barred the present action based on *res judicata* and issue preclusion.

As to defendant Storch, the district court found that "the claims lodged against defendant Storch are no different from the claims plaintiff or her company sought to lodge against defendant Storch and/or sought to pursue against defendant Storch's company, J[AAM], LLC, in Civ. No. 06-5032(KSH), Civ. No. 08-2370(SDW), and Bankruptcy No. 08-13514(DHS)." *Order*, Sept. 28, 2009;

see Wai Yip Int'l Corp. v. JAAM, LLC, No. 06-5032(KSH), 2007 WL 4200459 (D.N.J. Nov. 26, 2007); *JAAM, LLC*, Bankruptcy No. 08-13514(DHS) (D.N.J. 2009) (unpublished). The court held that all of the patent and copyright claims against Storch are barred on the ground of *res judicata*, and dismissed the complaint as to Storch.

As to defendant Hugs to Go, the district court ruled that the complaint "fails to show that Hugs to Go existed at the time of the acts about which plaintiff complains or that itself engaged in acts associated with the books that plaintiff contends are covered by the patent." The court also held that the complaint did not satisfy *Twombly*'s requirement that a pleading "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." 550 U.S. at 555 (quoting Rule 8(a), Fed. R. Civ. P.). The Court explained in *Twombly* that "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* Acknowledging Yip's *pro se* status, the district court granted leave to amend the complaint so that she could set forth facts underlying her charges that Hugs to Go infringes her patent and copyrights. *Order*, Sept. 28, 2009.

Yip filed an amended complaint on October 8, 2009. Yip included claims against Storch, in contravention of the district court's dismissal of Storch. Yip also added JAAM to the complaint as a new defendant, despite the district court's statement that Yip's claims against JAAM were *res judicata*. As a result, the district court struck the amended complaint for failing to comply with the court's September 28 order. Because of her *pro se* status, the district court afforded Yip "one additional opportunity to file an Amended Complaint against Hugs to Go." The district court directed that the amended complaint shall be directed to "Hugs to Go only" and must "set[] forth the

facts that provide a basis to assert that it has violated the patent laws by selling the books covered by the patent and describe[] the proof upon which the plaintiff will rely to support this assertion," in accordance with *Twombly*. *Order*, Oct. 14, 2009.

On October 22, 2009, Yip filed a second amended complaint asserting claims against Hugs to Go, and including claims against Storch and JAAM, again contravening the district court's orders. The district court struck the second amended complaint, ruling that it did not comply with the court's earlier orders, failed to satisfy the *Twombly* pleading standard as against Hugs to Go, and was improper on *res judicata* grounds as to Storch and JAAM. *Order*, Oct. 29, 2009 (dismissing all claims). Yip filed a motion for reconsideration, arguing that the district court had improperly dismissed her claims against all three defendants. The district court denied the motion, stating, among other things, that Yip had not shown that the court had overlooked any facts or law, that no new evidence had been presented, and that a manifest injustice would not occur. This appeal followed.

DISCUSSION

I

The defendants question the timeliness of Yip's appeal, and thus challenge this court's jurisdiction. *See Bowles v. Russell*, 551 U.S. 205 (2007) (timely filing of notice of appeal is a jurisdictional requirement); *Sofarelli Associates, Inc. v. United States*, 716 F.2d 1395 (Fed. Cir. 1983) (appeal must be dismissed for lack of jurisdiction if notice of appeal is untimely). Yip filed the Notice of Appeal on November 20, 2009, appealing the district court's "order limiting claims against Hugs to Go LLC and precluding Plaintiff's claims against Defendant JAAM LLC and Ms. Storch." The defendants argue that the Notice was filed more than 30 days after the September

28, 2009 order, and well over a year after the dismissal of one of Yip's prior cases against Storch. However, Yip is not appealing any order or judgment from a prior case; she is appealing the dismissal of her complaint in the present action. The date of dismissal of Yip's prior lawsuits has no bearing on the timeliness of her appeal in this case. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed "with the district clerk within 30 days after the judgment or order appealed from is entered").

Of the several orders in the present case, all but the last order afforded Yip leave to amend her complaint. A dismissal with leave to amend is generally not an entry of final judgment under 28 U.S.C. §1295. *Phonometrics, Inc. v. Hospitality Franchise Systems, Inc.*, 203 F.3d 790, 793 (Fed. Cir. 2000). In *Jung v. K. & D. Mining Co.*, 356 U.S. 335, 336-37 (1958), the Court explained:

> We think that the District Court's order of May 27, 1955, denying petitioners' motion to vacate the order of May 10, 1955, but granting further leave to petitioners to amend their complaint, did not constitute the final judgment in the case. It did not direct "that all relief be denied" (Rule 58 of Federal Rules of Civil Procedure, 28 U.S.C.A.) but left the suit pending for further proceedings "either by amendment of the (complaint) or entry of final judgment."

The district court's orders dismissing the complaints but granting leave to amend were not final judgments, and were not entered as final judgments. Only a final decision is appealable, meaning a decision that "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Van Cauwenberghe v. Biard*, 486 U.S. 517, 521-22 (1988) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

The district court's order of October 29, 2009, dismissing the complaint against all parties with no further leave to amend, was the final decision. Yip's appeal was timely filed within 30 days thereafter.

II

Yip challenges the dismissal on grounds of *res judicata* against defendant Storch. Under the law of the applicable regional circuit, here the Third Circuit, the assertion of *res judicata* by a party to the prior proceeding is entitled to plenary review. *Jean Alexander Cosmetics, Inc. v. L'Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006). The party asserting the bar must show that there has been a final judgment on the merits in a prior suit involving the same parties and that the subsequent suit is based on the same cause of action. *United States v. Athlone Industries Inc.*, 746 F.2d 977, 983 (3d Cir. 1984) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979)).

The district court found that the claims now asserted are the same as the claims against Storch in *Yip v. Storch*, Civ. No. 08-2370, whose final judgment was the dismissal with prejudice of all claims against Storch, by order dated July 31, 2008. No appeal was taken from that final judgment. Accordingly, the district court correctly ruled that Yip is precluded from now reasserting the same claims against Storch.

III

The district court also precluded Yip from pursuing claims against JAAM under the doctrine of collateral estoppel, whereby a litigant may be precluded from advancing a position upon "a showing that there has been (1) a final judgment on the merits in a prior suit involving (2) the same claim and (3) the same parties or their

privies." *E.E.O.C. v. U.S. Steel Corp.*, 921 F.2d 489, 493 (3d Cir. 1990).

The prior suits against JAAM were based on the same infringement claims, but the plaintiff was Wai Yip International. The district court found that Yip and Yip's company, Wai Yip International, were privies. Privity includes relationships "(1) where the nonparty has succeeded to, or shares a concurrent right to the party's interest in, property; (2) where the nonparty controlled the prior litigation; and (3) where the party adequately represented the nonparties' interests in the prior proceeding." *Robertson v. Bartels*, 148 F. Supp. 2d 443 (D.N.J. 2001); *see Montana v. U.S.*, 440 U.S. 147, 154 (1979) ("[O]ne who prosecutes or defends a suit in the name of another to establish and protect his own right, or who assists in the prosecution or defense of an action in aid of some interest of his own . . . is as much bound . . . as he would be if he had been a party to the record.").

Yip actively participated in the litigation as the principal agent of her company, and Yip's interest in those actions was identical to those of her company. The district court held that Yip is bound by the prior judicial determinations against Wai Yip International, and that Yip is estopped from relitigating those claims against JAAM. No error has been shown in this ruling, and in the dismissal on this ground.

IV

In addition, the district court's dismissal as to Storch and JAAM was based on Yip's failure to comply with the court's orders to remove these defendants from her complaint. Yip twice failed to comply with this directive, despite warnings from the court that her complaint would otherwise be dismissed.

Rule 41(b) of the Federal Rules of Civil Procedure states that a court may dismiss an action "[f]or failure of

the plaintiff . . . to comply with these rules or any order of court . . . ." Rule 41(b) dismissals are reviewed on the ground of abuse of discretion. *Claude E. Atkins Enterprises, Inc. v. United States*, 899 F.2d 1180, 1183 (Fed. Cir. 1990). An exercise of discretion will not be disturbed on appeal "unless upon a weighing of relevant factors we are left with a definite and firm conviction that the court below committed a clear error of judgment." *Adkins v. United States*, 816 F.2d 1580, 1582 (Fed. Cir. 1987) (internal quotation marks omitted). Here, Yip was given two opportunities to comply with the district court's order and was warned of the consequences. We discern no abuse of the district court's discretion in striking Yip's amended complaint, as to Storch and JAAM, for failing to follow the court's orders.

V

The district court dismissed Yip's claims against Hugs to Go for failing to meet the pleading standard of Rule 8(a)(2) of the Federal Rules of Civil Procedure which requires "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Dismissal under Rule 8(a) is a procedural action not specific to patent law, and is reviewed in accordance with the procedural law of the regional circuit. *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1355-56 (Fed. Cir. 2007). The Third Circuit reviews de novo a dismissal for failure to comply with Rule 8(a)(2). *McTernan v. City of York, Pa.*, 577 F.3d 521, 526 (3d Cir. 2009).

In general, the pleadings of *pro se* litigants are held to a lesser standard than those drafted by lawyers, when determining whether a complaint should be dismissed for failure to meet the requirements of the statement of claim. *Hughes v. Rowe*, 449 U.S. 5, 9-10 (1980); *see*

Haines v. Kerner, 404 U.S. 519, 520 (1972) (holding a *pro se* complaint to "less stringent standards than formal pleadings drafted by lawyers").

The district court ruled that Yip's second amended compliant did not identify any specific, factual claim against Hugs to Go. Yip's second Amended Complaint (dated Oct. 22) attempted to incorporate by reference facts stated in and evidence appended to her first Amended Complaint (dated Oct. 8), which had been struck by the district court. It seems clear that Yip was trying to include materials from the earlier complaint in her amended pleading. These materials included:

- Printouts from the Hugs to Go website showing the alleged infringing products being sold after the bankruptcy proceeding had been initiated (Exhibit 2, Appellant's Informal Brief);
- Affidavits and emails from those who purchased the alleged infringing products from Ms. Storch after JAAM filed for bankruptcy (Exhibit 3, Appellant's Informal Brief); and
- An expert report by an attorney documenting the identical nature of the products and including a claim chart (Appendix to Brief for Plaintiff-Appellant).

The district court did not mention any of these materials, apparently deeming them absent since neither their contents nor significance were described in the first amended complaint and because the complaint had been struck. In her first amended complaint, Yip's only reference to the attached documents can be derived from the statement: "8. Hugs to Go LLC, the new company for Audrey L. Storch still continues to sell Plaintiff's books after JAAM, LLC bankruptcy (Evidence Submitted in

Case No 08-4746(KSH))" (where the "Evidence" is referring to the appended materials). In her second amended complaint, Yip does specifically reference a telephone transcript that was appended to the first amended complaint, but she does not explain its contents or significance.

The district court continued to find the complaints inadequate, for Yip did not describe, explain, or particularly reference facts in her pleadings, despite the guidance of the district court. In the second amended complaint Yip did not plead facts to establish that Hugs to Go existed at the time of the alleged acts or that Hugs to Go itself engaged in infringing acts. Yip was afforded several opportunities for correcting the deficiencies in the complaint. We agree with the district court that, as twice amended, Yip's complaint still did not meet the pleading requirements of Rule 8(a)(2) as explained in *Twombly*. Although we recognize the obstacles confronting a *pro se* litigant, we conclude that the district court's actions of dismissal were in accordance with law.

CONCLUSION

The district court's dismissal of the complaint is affirmed. The defendants' motion for sanctions is denied. Each party shall bear its costs.

AFFIRMED

United States Court of Appeals for the Federal Circuit

2010-1112

PING YIP

Plaintiff-Appellant

v.

HUGS TO GO LLC and AUDREY L. STORCH.

Defendants-Appellee.

Judgment

ON APPEAL from the United States District Court for the District of New Jersey in CASE NO(s). 08-CV-4746
This CAUSE having been heard and considered, it is
ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED MAY 28 2010

Jan Horbaly, Clerk

ISSUED AS A MANDATE: AUG 25 2010

NOTE: This order is nonprecedential

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ORDER

A combined petition for panel rehearing and for rehearing en banc having been filed by the Appellant, and a response thereto having been invited by the court and filed by the Appellees, and the petition for rehearing and response, having been referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc and response having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for panel rehearing be, and the same hereby is, DENIED and it is further

ORDERD that the petition for rehearing en banc be, and the same hereby is, DENIED.

The mandate of the court will issue on August 25, 2010.

FOR THE COURT,

Dated: 08/18/2010

Jan Horbaly

Jan Horbaly
Clerk

CC: Ping Yip
Audrey Storch

YIP V HUGS TO GO, 2010-1112
(DCT-08-CV-4746)

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

AUG 18 2010

JAN HORBALY
CLERK

Introduction

Our exclusive *HUGGEE MISS YOU* collection features an incredibly soft, plush huggable "picture friend Every *HUGGEE MISS YOU* comes with an embroidered smiling face that children and adults of all ages can't help but smile back at! Over that incredibly cute face is a clear plastic pocket that lets you put in a picture of anyone you love! Now you can hugg our 17 inch or our 11 inch size *HUGGEE MISS YOU'S* HUGGEE MISS YOU is also great if you are a teacher or a therapist! We are thrilled to announce that yo can receive FREE- 3 curriculums to go with your HUGGEE MISS YOU. Just call and ask us for the det If your special someone has special needs, be comforted to know that HUGGEE MISS YOU will make th feel warm and safe. HUGGEE MISS YOU is safe for ALL ages. machine washable (on delicate-in a pillowcase), and hypoallergenic too!

Make sure your customers send off their loved ones with a hugg whether it is *CAMP, PRESCHOOL, DA CARE, KINDERGARTEN, COLLEGE, WORKING & TRAVELING PARENTS, GRANDPARENTS, BIRTH & BIRTHDAY PRESENTS, LOVERS* just remember *ANYTIME, ANYONE, IS SEPARATED FROM THE ONES THEY LOVE.... GIVE THEM A HUGG—HUGGEE MISS YOU.*

JAAM LLC Is Proud To Have Donated For Breast Cancer Research & Programs From The Sales Of Huggee Miss You And Will Continue To Try And Do So!

Give A Hugg To Someone Special Today!